IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Writ Appeal No.1800 of 2001

K.Damodara Menon,
Partner of Guru Industries,
Now Vikas Industries,
No.72/26A, Theerthgiriyar Street,
Kumaraswamypet P.O.,
Dharmapuri District,
PIN-636 701. ..Appellant

Vs.

1. The Deputy Commercial Tax Officer,
   Dharmapuri,
   Dharmapuri District.

2. The Commercial Tax Officer,
   Dharmapuri,
   Dharmapuri District.

3. Tamil Nadu Industrial Investment Corporation,
   Dharmapuri District,
   Dharmapuri. ..Respondents

Appeal under Clause 15 of the Letters Patent, against the order of the learned Single Judge passed in W.P. No.5573 of 2001 dated 13.06.2001.

WP.5573 of 2001 : Petition presented to this Court to issue a writ of certiorarified mandamus calling for the records of the 2nd respondent in his proceedings Na.Ka.No.1030/85/A3 dated 5.3.2001 demanding a sum of Rs.1,37,811/- and ofter quasing the same direct the respondents to for bear from demanding only amount from the petitioner.

For Appellant : Mr.K.Ramachandran

For Respondents: Mr.Haja Nazirudeen, Spl.GP(Taxes)
for R1 & R2

Mrs.Rita Chandrasekar for R3

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JUDGMENT

(Judgment of the court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed against the order of the learned Single Judge passed in W.P. No.5573 of 2001 dated 13.06.2001.

2. The brief facts arising out of this Writ Appeal are as under:

The appellant is a partnership firm and had started its industry with funds provided by the Tamil Nadu Industrial Investment Corporation ("TIIC" in short), the above mentioned third respondent. The initial borrowing was Rs.1,00,000/- out of which more than Rs.70,000/- had been consumed by way of laying the foundation for starting the industry. In the year 1983, there was a raid by the Commercial Tax Authority and proceedings were initiated against the appellant. After conducting the raid, the Department seized all the documents as well as the machinery though the same were still under hypothecation with the TIIC. There was also an attempt by the Revenue Authorities to bring the property to sale. Hence the appellant filed O.S.No.290 of 1985 on the file of District Munsif Court, Dharmapuri for declaration and injunction in respect of the action initiated by the Deputy Commercial Tax Officer, Dharmapuri, the above mentioned first respondent, against the properties of the appellant. Learned District Munsif, by his Judgment and Decree dated 19.07.1991, decreed the suit. Later, the appellant also filed E.P.No.45 of 1999 in O.S. No.290 of 1985 against the first respondent under Order 21 Rule II C.P.C. for executing the decree by initiating proceedings under the Contempts of Court Act for wilful disobedience of the Court's order. Learned District Munsif heard the matter and dismissed the petition holding that there was no violation of the Court judgment. In view of the dismissal of E.P.No.45 of 1999, the second respondent had issued notice dated 05.03.2001 directing the appellant to pay a sum of Rs.1,37,811/-. The said notice dated 05.03.2001 made by the second respondent was challenged by the appellant by way of a writ petition in W.P.No.5573 of 2001 before this Court and this Court, by order dated 13.06.2001, dismissed the writ petition. Aggrieved by the order of the learned Single Judge, the appellant has preferred the present writ appeal.

3. Learned counsel appearing for the appellant submitted that the appellant had obtained a decree in Civil Court restraining the respondents from proceeding against the property and the said decree had become final and conclusive and also the respondents had not filed any appeal. Hence, no proceeding of attachment for realisation of sales tax arrears can be continued against the appellant and the learned Single Judge ought to have granted relief.

4. Learned Special Govt. Pleader (Taxes) appearing for the Revenue, submitted that there is a clear provision under Section 51 of the Act, barring the Civil Court to grant injunction in respect of any action taken in pursuance of the provisions of the Act and hence the Civil Court has no

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jurisdiction to entertain a suit and the learned Single Judge rightly rejected the contention of the appellant.

5. Heard the counsel. Section 51 of the Tamil Nadu General Sales Tax Act reads as follows:

> "51. Bar of suits and proceedings to set aside or modify assessment except as provided in this Act - (a) No suit or proceedings shall, except as expressly provided under this Act be instituted in any court to set aside or modify any assessment made under this Act.
>
> (b) No injunction shall be granted by any court in respect of any assessment made, or to be made, or in respect of any action taken, or to be taken, in pursuance of any of the provisions of this Act."

From bare reading of the above provision, it is clear that no suit or proceedings can be initiated in any Civil Court to set aside or modify any assessment made under the Act. Further it is stated that no injunction can be granted by any Civil Court in respect of any assessment made, or to be made, or in respect of any action taken, or to be taken, in pursuance of any of the provisions of this Act. The Act provides complete machinery for adjudication as well as recovery and when there is a specific bar, the appellant has no right to file a suit in the Civil Court and the Civil Court has no jurisdiction to entertain and grant any injunction. The only remedy open to the assessee is to avail the remedies as contemplated under the provisions of the Act. The effect of Section 51 of the Act is that no suit can be brought in any Civil Court to set aside or modify or grant any injunction in respect of any assessment or any action taken in pursuance of the provisions of the Act. Sales tax is complete code by itself and it provides for complete assessment, raising demand and Recovery Proceedings. Section 51 of the Act prohibits a Civil Court to grant injunction in respect of any action taken in pursuance of the provisions of the Act. Therefore the decree of the Civil Court cannot be put in defence or sealed against the coersive or Recovery Proceedings initiated under the Act. We do not find any error or legal infirmity in the order of the Single Judge and the reasons given by the Single Judge are based on valid materials and evidence. Hence the order of the Single Judge is in accordance with law and the same does not require interference.

6. Under the circumstances, the writ appeal is dismissed. No costs.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Deputy Commercial Tax Officer,
   Dharmapuri,
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2. The Commercial Tax Officer,
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   Dharmapuri District.

3. Tamil Nadu Industrial Investment Corporation,
   Dharmapuri District,
   Dharmapuri.

+1 cc to Mr.K.Ramachandran, Advocate Sr.No.21397.

+1 cc to M/s.Aiyar & Dolia, Advocate sr.No.21848.

+1 cc to Spl.Government Pleader Sr.No.21677.

PV(Co)
dcp/24.4.07

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